



## Marine & Coastal Access Bill A briefing from the BMC – January 2009

**Contact:** Dr. Catherine Flitcroft, Access & Conservation Officer  
**Email:** [Cath@thebmc.co.uk](mailto:Cath@thebmc.co.uk) **Tel:** 0161 438 3333

The British Mountaineering Council (BMC) is the representative body for climbers, hill walkers and mountaineers in England and Wales. We have some 63,000 members, many of whom participate in a range of activities along the coast including walking, sea cliff climbing, coastering and deep water soloing. The BMC is a statutory consultee under CROW.

The BMC interest in the Marine and Coastal Access Bill is focussed and direct. It is focussed in that our interest is in Part 9, Coastal Access, and direct in that the BMC has been actively involved in managing access to coastal sites for rock climbing and other activities for over 30 years.

The BMC along with other leading recreational and conservation organisations, who together represent over 4 million people, has been campaigning for a permanent right of access to our coast, which should extend from the mean low water mark to a point inland, and include areas such as beaches, the foreshore and cliffs.

- The BMC supports the Government's vision for coastal access as set out in Part 9 of the Marine and Coastal Access Bill. The recognition that open air recreation is intrinsically valuable along the coast of England is key to the coastal access vision.
- The access regime delivered by the Marine and Coastal Access Bill must deliver a right of access for open air recreation along the English coast with a guarantee of geographical and temporal integrity.
- Exceptions from the access right and deviations to the route must only be brought in where there is a clear base in evidence that this is necessary.
- The Marine and Coastal Access Bill and Natural England's Coastal Access Scheme must ensure that current management arrangements such as those of the BMC continue under the new access regime.
- The provisions in the Bill strike an appropriate balance between the rights of access and the rights of owners and occupiers. The route of the path and location of access land will involve discussions with all parties during the consultation phase.
- The public perception is that estuaries are an integral part of the coastal landscape and are not separate from it. The coastal margin should extend to the normal tidal limit, subject to a crossing point being available. It is essential that unbroken passage and the integrity of the coastal margin is maintained.
- The BMC supports the use of the phrase 'physical feature' in Section 1 of the Occupiers Liability Act 1984. This will be easier to objectify than 'natural features', the form of words used in the CROW Act 2000.

## **1. *The BMC and Current Coastal Management Practices***

The coast has long been a focus for open air recreation undertaken by BMC members, including coastal path walking, rock climbing and coasteering. We have been involved in managing access for these activities for over 30 years. In total, there are 169 climbing sites along the English coast which carry between them some 10,000 rock climbing routes. In managing access we co-operate with landowners and conservation organisations, particularly the National Trust, RSPB, and the Wildlife Trusts. Our management activities bring benefits to both conservation and recreation.

The BMC has a wealth of knowledge and experience in the management of voluntary bird nesting restrictions and what constitutes real rather than perceived disturbance. Along the English coast there are currently 79 seasonal bird nesting restrictions in place. The bulk of these are to protect Schedule 1 listed species or large colonies of nesting seabirds. In 2008, 18 different species of bird were protected. Restrictions are agreed on a case-by-case basis and often last for only a few weeks during which time the birds will breed and fledge. All of the nesting restrictions that are agreed, are advertised on the BMC Regional Access Database (RAD). RAD contains a comprehensive list of all the crags (including coastal cliffs) where there are restrictions and provides up to date access information ([www.thebmc.co.uk/bmccrag/](http://www.thebmc.co.uk/bmccrag/)). The BMC encourages the ongoing monitoring and reviewing of restrictions and also actively encourages climbers to inform us of any significant changes in nesting patterns or new nest sites.

Seasonal restrictions are based on consensus, partnership, flexibility, site-by-site assessment, and where possible, scientific fact and evidence. The current system works because climbers respect restrictions that are agreed between the BMC and conservation organisations. They know that they are justified and reasonable. Conservation bodies and land managers are also confident that once the BMC has agreed to a restriction it will be respected by climbers, generally without the need for site monitoring. Indeed, many cliffs with seasonal restrictions are in remote, inaccessible areas, where continued monitoring is impractical. It is therefore essential that the goodwill of climbers is retained and fostered to ensure that the system continues to work effectively.

It is essential that the design and management of the coastal access scheme recognises and draws on current experience and expertise. Voluntary climbing restrictions are covered by paragraph 6.4.9 of Natural England's draft scheme.

“Where Natural England considers that voluntary climbing restrictions are already effective in protecting features such as nesting birds or cliff flora, these should continue to apply.”

The BMC are supportive of this and are confident that it forms a good basis for the continued management of coastal climbing sites.

## **2. *The coastal access vision***

The BMC fully supports the Government's vision for coastal access as set out in the Marine and Coastal Access Bill. The two elements, the 'long distance route along which the public are enabled to make recreational journeys on foot' and the 'margin of land along the length of the English coast with a right of access for open-air recreation' are together, an appropriate and welcome vision of access to the coast of England.

It is essential to the vision that the right of open air recreation over a coastal margin runs from the foreshore to an appropriate inland boundary. This will allow people to participate in a full range of foot based activities and to enjoy the recreational and landscape qualities of the coast.

The approach adopted in the Bill is an innovative way of providing a linear route while at the same time providing for the essential wider benefits of area based open air recreation with access to the sea.

### **3. *The coastal access duty***

The Bill utilises provisions in the National Parks and Access to the Countryside Act 1949 (NPAC Act) and the Countryside and Rights of Way Act 2000 (CROW Act) to establish long distance routes and a right of access for open air recreation in a coastal margin.

The BMC view is that this is an efficient and effective way of providing access rights to the coast. It relies on legislation that is already on the Statute Book and avoids the use of a stand alone new approach. The NPAC 1949 Act and the CROW 2000 Act are known to access and land management practitioners and to the public. Using these will not only limit the need for new legislation but also reduce uncertainty and increase confidence in the proposal. It is however, essential to ensure that the provisions of Part 9 that amend the NPAC 1949 Act and the CROW 2000 Act are examined in detail to ensure that the intention of Government's vision is fully delivered by the Bill.

The methodology for implementing the coastal access duty and the Natural England Coastal Access scheme must be as straight forward and resource efficient as possible. It must also gain the confidence of access and land management practitioners and of the public. Clause 288 of the Bill provides for the preparation of the Coastal Access Scheme. The BMC supports this approach.

The mechanisms for implementing the Coastal Access Scheme and the subsequent management of the right of access must be carried out in a way that maximises efficiency and minimises bureaucracy. The methodology used to implement Part 1 of the CROW Act did not achieve this. It was excessively time and resource demanding and at the same time prone to error. It was also flawed in that once made, errors could not subsequently be rectified. As a result, there is still no right of access to some areas of land that were mapped under CROW as access land but were then excluded because of administrative errors. It is essential that the implementation of coastal access avoids these pitfalls.

The implementation of the coastal access duty by Natural England will involve the preparation of reports under section 55A and 55B of the 1949 Act, introduced by clause 292. Section 55D (3) specifically sets out that Natural England reports 'must set out any proposals required for directions on the exclusion or restriction of the right of access under Section 2 (1) of that Act.' Subsection (4) specifically sets out the bodies with which Natural England must consult. The list does not include organisations such as the BMC which as noted above, are Statutory Consultees under CROW, and are actively involved in the management of coastal access and coastal recreational resources. Given that BMC's management approaches are widely recognised as best practice and that it is important that the least restrictive option be taken, as established under CROW, it is vital that there is full consultation with organisations actively involved on the ground.

### **4. *Deviations from the normal coastal route***

The integrity of the access corridor and the opportunity to take open air recreation within it and along it, are fundamental to the delivery of the coastal access vision. The BMC's experience is that where the public have confidence in an access regime, they act responsibly. Problems occur where there is a lack of clarity about what the public can do and where management restrictions do not appear to reflect the situation on the ground. Exceptions from the access right and deviations to the route must only be made where there is clear evidence of need. They must also respect the overriding principle that

access should be over the full coastal margin, inland from the foreshore, and that the National Trail must be in close proximity to the coast.

## **5. *Excepted Land***

It is essential that existing activities and management arrangements are respected and that activity that currently takes place can continue. There may be situations where recreational patterns change or new recreational activities are introduced into particular areas. In circumstances where it can be clearly demonstrated that the location is sensitive to recreational use, some formal exceptions to access may need to be considered. This currently happens on CROW land under Schedule 1 of that Act. The BMC view is that the provisions of this schedule fully cover the situations that might be encountered at the coast. It should be used and no additional mechanism is necessary.

## **6. *Parks and Gardens***

The BMC is concerned at the possibility that land within parks and gardens will be excluded from the coastal margin and the route of the national trail. As noted above, the integrity of the coastal access right is essential to the delivery of the coastal access vision; making exclusions of this type would compromise this. In establishing the coastal margin, regard must be had only to the character of the land itself, and land falling within this must be included irrespective of how a land owner may choose to describe a piece of land. Any other approach could allow a land owner to describe the whole, or part of, his land as park land and require its exclusion from the coastal margin on this basis.

Exclusions were sought for parks and gardens under the CROW mapping process on the grounds of privacy and exclusivity. These were not successful and where land within parks and gardens were of a qualifying land type it was mapped as such under CROW. This principle must be applied in the same way to coastal land. To do otherwise would not only compromise the integrity of the coastal access vision but would potentially re-open arguments previously had under CROW and allow land owners to make claims that land currently and properly mapped as open access land be excluded from the right of access in the future.

## **7. *Land Management Restrictions***

The BMC view is that the use of a land management restrictions regime such as that under CROW would have a detrimental effect on the integrity of access along the coast. Allowing landowners to restrict access at different locations and at different times of the year would mean that there would never be a guarantee of a permanently accessible coastal access corridor. Restrictions of this type are not appropriate for coastal access land which is essentially narrow and linear in nature and has an inland edge defined by a field or other boundary.

Under CROW a process was put in place to identify those areas of land designated as SSSI's where changes in the level and type of activity could be expected after the introduction of the right of access, and to assess whether any exceptions or restrictions, formal or informal, might be appropriate. This process worked well and the BMC view is that the same principles should be applied in assessing the need for exceptions and restrictions in reports to the Secretary of State under the exercise of the coastal access duty.

## **8. A right to compensation**

The coastal access vision is centred on the integrity of the coastal margin, the recreational opportunities within it and its proximity to the coast. The BMC view is that in seeking to achieve this vision, the provisions in the Bill strike an appropriate balance between the rights of access and the rights of owners and occupiers.

Extensive consultation has been undertaken by Natural England in answering the concerns of landowners and in drawing up the draft coastal access scheme. The BMC view is that this consultation and the continuing efforts on the part of Natural England will ensure that there is no need for compensation to landowners.

## **9. Coastal access in estuaries.**

A number of significant climbing sites along the English coast are located in estuaries. Examples of these are attached in Appendix 1. These are fundamentally the same as other climbing sites in England, coastal or inland, and are used and managed in the same way. No access issues or problems have been identified by the BMC in relation to estuary crags. It is essential that access to estuaries where open air recreation is traditionally and currently taken is protected and continues under the new access regime.

## **10. The proposed arrangements for limiting liability**

Clause 296 amends the Occupiers Liability Act 1984 by inserting the term 'physical feature (whether of the landscape or otherwise)'. It also inserts 'a risk of that person suffering injury when using any other means of access (within the meaning of section 34 of that Act) other than in a proper manner.' The BMC fully supports the use of this wording.

The BMC have always taken the view that people must take responsibility for their own actions. This is clearly set out in the BMC participation statement which reads;

*'The BMC recognises that climbing, hill walking and mountaineering are activities with a danger of personal injury or death. Participants in these activities should be aware of and accept these risks and be responsible for their own actions.'*

## **BMC comments on marshalled list of amendments tabled before 12<sup>th</sup> January.**

Outlined below are the BMC comments on the marshalled list of amendments tabled before 12<sup>th</sup> January appertaining to Part 9 of the Bill. The BMC has suggested some further amendments be made, these are indicated in bold text.

### 1. *Inclusion of local authorities as an agency in delivering the coastal access duty*

A series of amendments have been tabled to include local authorities within the provisions of the Bill, starting at Clause 286, amendment 138 and ending at clause 291, amendment 157: these are set out below. The BMC oppose all of these amendments.

#### **Clause 286**

**138** Page 173, line 17, after "England" insert ", the local authority"

#### **Clause 287**

**143** Page 174, line 39, after "England" insert ", the local authority"

#### **Clause 288**

**144** Page 175, line 9, leave out "Natural England" and insert "The local authority"

**145** Page 175, line 12, after "to" insert "Natural England and"

**146** Page 175, line 16, at end insert—

"( ) The Secretary of State must lay any scheme approved under subsection (2)(a) before both Houses of Parliament."

#### **Clause 289**

**147** Page 175, line 37, after "England" insert "or the local authority"

#### **Clause 291**

**150** Page 176, line 27, at beginning insert "The local authority and"

**151** Page 176, line 27, leave out "its" and insert "their"

**152** Page 176, line 32, after "if" insert "the local authority and"

**153** Page 176, line 32, leave out "decides" and insert "decide"

**154** Page 176, line 36, after "river," insert "the local authority and"

**155** Page 176, line 40, after "if" insert "the local authority or"

**156** Page 177, line 13, after "to" insert "the local authority and"

**157** Page 177, line 14, after "by" insert "the local authority or"

The inclusion of local authorities in the Bill is inappropriate and is opposed by the BMC. The coastal access regime in the Bill is a national scheme and requires implementation on a national basis. The clear intention throughout the development of the Bill has been that this is an integrated, England wide project. Introducing a local authority element into the implementation of the scheme would defeat the objective of the Bill. Natural England is the best and most appropriate body to deliver coastal access in England.

Amendment 146 would require the Secretary of State to lay the Scheme before both Houses of Parliament. The coastal access scheme is a working document prepared by Natural England. It is not appropriate that it should be laid before Parliament. There is a requirement in clause 288 (3) that the scheme be submitted to the Secretary of State within 12 months of the Act and this is a sufficient requirement. The inclusion of local authority involvement at this stage of the Coastal Access Bill would be unnecessary and confusing. It would also be difficult, if amendment 146 was accepted, to work out how the process would work. The BMC oppose this amendment.

2. Clause 286 The coastal access duty

139\* Page 173, line 21, leave out "one or more" and insert "a"

140\* Page 173, line 21, leave out "routes" and insert "route"

The BMC support these amendments. They provide greater clarity and relate more closely to the wording used in clause 286 (3) "that route" and the "English coastal route".

141\* Page 174, line 5, at end insert ", or  
( ) not land which may be required for future port development."

**Amendment 141, leave out "may be" and insert "is".**

The BMC feels this amendment needs clarification and tighter wording. Land should only be excluded from the coastal access scheme when it is required for port development, not when there maybe an expectation of this. This expectation could be projected into the future and be used as a pretext to exclude land inappropriately.

142\* Page 174, line 12, leave out ", or during certain periods," and insert "of the day"

**Amendment 142, leave out "or during certain periods" and insert "of the day and during certain periods only."**

This change would clarify the meaning and intention of clause 286 (7) and would take into account that some ferries rely on daily tides and / or may only operate on a tide dependant seasonal basis.

3. Clause 287 General provisions about the coastal access duty

**Page 174, line 43, leave out "desirability of" and insert "need for"**

**Page 174, line 45, leave out "desirability of ensuring" and insert "need to ensure"**

The language in clause 287 (2) (b) and (2) (c) is not sufficiently strong to ensure that the coastal access duty is discharged in the manner intended. The amendments suggested would ensure that this would happen.

4. Clause 290 The English Coast

**Clause 290**

148\* Page 176, line 9, leave out paragraph (b)

149\* Page 176, line 13, at end insert "or if it is possible to reach it by ferry"

The BMC fully support amendment 149. As clause 290 stands at the moment, islands such as Lundy could only be included within the right of access to the coast by order at the discretion of the Secretary of State. Island environments are a nationally important part of the coast and those that are reached by ferry must be included in the coastal access duty.

**Page 176, line 15, after "times" insert "of the day and during certain periods only."**

The BMC propose that to ensure clarity and certainty the same form of words should be used as in amendment 142.

**Page 176, line 18, leave out "long- distance"**

**Page 176, line 19, leave out "an extensive" and insert "a"**

The form of words used in clause 290 (5) will not be appropriate for all islands. Islands are an essential and integral part of England and must be included in the coastal access duty. Smaller islands offer an essential part of the coastal recreational experience irrespective of whether or not the route around their coast is a "long distance" one.

#### 5. Clause 292 Long Distance Routes

#### **Page 177, line 34, leave out "may" and insert "must"**

This change will ensure consistency with suggested amendment 163 and is necessary to ensure that the coastal access scheme is delivered.

#### **Clause 292**

**158\*** Page 178, line 36, leave out from "during" to end of line 37

**159\*** Page 178, line 40, at end insert ", and

(c) any time of the day or longer period during which a ferry which forms part of the ordinary route is not operating."

**160\*** Page 178, line 43, leave out from first "part" to end of line 2 on page 179

**161\*** Page 179, leave out lines 3 to 9

Amendments 158 to 161 relate to clause 292 55C. The BMC supports all of these amendments; they simplify and clarify the meaning and intent of clause 292 55C.

**162** Page 179, line 33, after "consult" insert "all"

The BMC oppose this amendment. It is not necessary.

**163\*** Page 180, line 29, leave out "may" and insert "shall"

The BMC support this amendment. It strengthens the intent of the Bill.

**164** Page 180, leave out lines 34 to 45

**168** Page 181, leave out lines 2 to 18

Amendments 164 and 168 relate to clause 292 55E. The BMC oppose these amendments. There is a need for openness and a transparent opportunity for discussion of coastal access reports.

**165\*** Page 180, line 41, leave out "and"

**166\*** Page 180, line 42, at end insert ", and

(vi) the Youth Hostels Association,"

**167\*** Page 180, line 42, at end insert

"( ) the British Association of Shooting and Conservation,

( ) the British Mountaineering Council,

( ) the Country Land and Business Association,

( ) the National Farmers' Union,

( ) the Open Spaces Society, and

( ) the Ramblers' Association,"

The BMC support this amendment. All statutory consultees under CROW should be included in the Coastal Access and Marine Bill.



6. Review of Natural England's reports

169 Page 181, line 44, at end insert—

**"55EA Review of report**

- (1) Natural England shall review from time to time a coastal access report made under section 51 in discharging the coastal access duty.
- (2) A review under this section must be undertaken—
  - (a) in the case of the first review, not more than 5 years after the issue of the report, and
  - (b) in the case of subsequent reviews, not more than ten years after the previous review.
- (3) A review under this section may be requested by persons with a relevant interest.
- (4) If a request under subsection (3) is refused, Natural England shall publish an explanation of their reasons."

The BMC oppose this amendment. The consultation in place will ensure that appropriate coastal access reports will be produced. In addition, the Natural England Draft Coastal Access Scheme set out provisions for the reassessment of reports.

7. The Right of Appeal

170 Page 181, line 44, at end insert—

**"55EA Independent appeal body**

- (1) The Secretary of State must by regulations establish an independent appeal body, to review appeals made under subsection (2).
- (2) Any person having an interest in any land may appeal to the independent appeal body against—
  - (a) the ordinary or alternative route or coastal margin; or
  - (b) the proposals made under section 55D(3);set out in the report under section 51 prepared pursuant to the coastal access duty.
- (3) On an appeal under subsection (2), the independent appeal body may—
  - (a) approve the whole or part of the ordinary or alternative route or coastal margin which is the subject of the appeal, with or without modifications;
  - (b) require Natural England to prepare a new ordinary or alternative route or proposal relating to all or part of the area covered by the route which is the subject of the appeal; or
  - (c) require Natural England to make new proposals as to the exclusion or restriction of the right of access."

**Clause 293**

171 Page 186, leave out lines 28 to 32

Amendment 170 and 171 relate to a right of appeal. The BMC opposes these amendments. The appeal process as set out in this amendment is inappropriate and unsatisfactory.

8. Clause 295 Restricting Liabilities of Natural England and the Secretary of State

**Clause 295**

172 Page 188, line 41, leave out subsections (1) to (3)

The BMC oppose this amendment. Natural England should not be subject to a duty of care in relation to clause 295 (1) (2) and (3).

The BMC would be happy to provide further information and discuss any of the issues surrounding coastal access and Part 9 of the Marine and Coastal Access Bill.

## Appendix 1: Examples of coastal cliff climbing sites in estuaries and tidal locations.



There are over 169 coastal climbing areas along the coast of England, extending from Landsend, North Somerset and Devon to Cumbria and Northumberland. Coastal climbing has always been an essential part of the rock climbing heritage of England. Over 625 main cliff faces provide some 10,000 rock climbing routes. Examples of climbing crags in tidal and estuary locations are given below. None of these currently have access as of right but access is freely taken and no problems have been encountered.

For more details on the latest access advice for cliffs in England and Wales, please visit <https://www.thebmc.co.uk/bmcCrag/>

### **1. Humphrey Head**

SD 390740 (*Landranger maps 97,96*)

<b>County</b>	Cumbria
<b>SSSI</b>	No
<b>No. of Routes</b>	40

The crag is positioned on a remote headland in the midst of Morecombe Bay's vast tidal sand flats.

#### **Access:**

*Seasonal Restrictions apply from 1 March - 30 June. Reason - Nesting Birds*  
Signed restrictions can be found at the base of the crag. Raven Crag, Thirlmere, Gimmer Crag and Wallowbarrow Crag and Gorge all have some restrictions. Lake District restrictions are monitored and reviewed in April/May. If the birds do not nest, restrictions are lifted early.

### **2. Brean Down**

ST 290588 (*Landranger map 182*)

<b>County</b>	Somerset
<b>SSSI</b>	Yes
<b>No. of Routes</b>	30

South-facing limestone sea cliff, with a range of mainly harder routes.

#### **Access:**

The base of most of the cliffs can be reached except within one or two hours of high tide.

### **3. Sand Point (Middle Hope)**

ST 324661 (*Landranger maps 171,182*)

<b>County</b>	Somerset
<b>SSSI</b>	No
<b>No. of Routes</b>	15

Situated on the north coast of the Middle Hope peninsula, five miles north of Weston-super-Mare. The section of principal interest is located about half a mile from the tip of Sand Point. Approach from the car-park by taking the path westwards along the ridge; immediately after crossing a stile, descend rightwards to a small pebble beach and the cliff just to the west.

**Access:**

The base of the cliff is tidal, but only inaccessible for one or two hours either side of high tide

**4. Ladye Bay (Clevedon)**

ST 410732 (*Landranger maps 172, 171*)

<b>County</b>	Avon
<b>SSSI</b>	No
<b>No. of Routes</b>	25

A line of low cliffs containing a number of sports routes and bouldering.

**Access:**

At high tide it becomes wet under foot.

**5. Charlcombe Cornice**

ST 431748 (*Landranger maps 172, 171*)

<b>County</b>	Avon
<b>SSSI</b>	No
<b>No. of Routes</b>	10

A short (10m) crag with some very steep climbing on pockets.

**Access:**

The cliff is tidal and at its base are slippery mud and seaweed strewn boulders.

**6. Toll Road Crag at Weston-Super-Mare**

ST 313627 (*Landranger map 182*)

<b>County</b>	Somerset
<b>SSSI</b>	No
<b>No. of Routes</b>	Bouldering

Access can be gained through the gardens of the little cafe along the road, go through the top tea garden and make your way down a narrow path that leads to the pebble beach.

**Access:**

The cliff is tidal and at its base are slippery mud and seaweed strewn boulders.